

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

BENJAMIN BIRNIE

v.

**BOARD OF ASSESSORS OF
THE CITY OF WORCESTER**

Docket No. F325133

Promulgated:
June 6, 2018

This is an appeal filed under the formal procedure pursuant to G.L. c. 58A, §7 and G.L. c. 59, §§ 64 and 65 from the refusal of the Board of Assessors of the City of Worcester ("appellee" or "assessors") to abate taxes on certain real estate located in Worcester co-owned by and assessed to Benjamin Birnie ("appellant"), under G.L. c. 59, §§ 11 and 38, for fiscal year 2014.

Commissioner Chmielinski heard this appeal. Chairman Hammond and Commissioners Scharaffa, Rose, and Good joined him in the decision for the appellee.

These findings of fact and report are made pursuant to a request by the appellant under G.L. c. 58A, § 13 and 831 CMR 1.32.

Benjamin Birnie, pro se, for the appellant.

John F. O'Day, Jr., Esq. for the appellee.

FINDINGS OF FACT AND REPORT

On the basis of testimony and exhibits entered into evidence at the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

On September 14, 2012, the appellant and Suellen Fischer purchased an improved 0.36-acre parcel of real estate located at 6 Wheeler Avenue in Worcester ("Subject Property") for \$530,000 in an arms'-length transaction. The Subject Property is improved with a two-story, Colonial-style, single-family residence that contains 3,534 square feet of living area, including five bedrooms, four full bathrooms and central air conditioning. The residence underwent a kitchen remodeling not long before the assessment date relevant to this appeal and the residence is in overall very good condition.

For fiscal year 2014, the assessors valued the Subject Property at \$525,700 and assessed a tax thereon, at the rate of \$19.54 per thousand, in the total amount of \$10,272.18.¹ The tax due was timely paid and in accordance with G.L. c. 59, § 59, the appellant filed an abatement application with the assessors. The assessors denied the abatement application on April 28, 2014 and the appellant seasonably filed this appeal with the Board on

¹ The Subject Property had been assessed at \$396,100 for fiscal year 2013.

July 23, 2014. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide the appeal.

The appellant stipulated that the Subject Property's assessed value for fiscal year 2014 did not exceed its fair cash value.² Rather, the appellant focused solely on the argument that the Subject Property had been disproportionately assessed for fiscal year 2014. In support of this argument, the appellant submitted property record cards for five properties located on the same street as the Subject Property. The appellant emphasized that not one of these properties' assessed values had risen nearly as much as the Subject Property's assessed value between fiscal year 2013 and 2014. This emergent disparity, according to the appellant, reflected disproportionate assessment of the Subject Property.

The appellant's chosen properties were similar to the Subject Property in certain respects including location, dwelling size and style, and lot size. Based on these and other similarities, the Board found that the properties were generally comparable to the Subject Property. Regardless, the comparable properties were also distinct from the Subject Property in other respects. In particular, none of the comparable properties had

² The evidence in the record, most importantly the sale of the Subject Property for more than its assessed value within months of the relevant assessment date, supported the conclusion that this stipulation was well-founded.

undergone a recent renovation as had the Subject Property. The appellant did not account for this distinction in his analysis.

For their part, the assessors relied on the presumed validity of the assessment.

Based on the foregoing, the Board found and ruled that the appellant failed to sustain his burden of demonstrating his entitlement to an abatement. Accordingly, the Board issued a decision for the appellee in this appeal.

OPINION

Assessors must assess real estate at its fair cash value as of the first day of January of the year preceding the fiscal year at issue. G.L. c. 59, §§ 11 and 38. Fair cash value is the price upon which a willing buyer and a willing seller would agree if both are fully informed and neither is under compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956).

The burden of proof is on a taxpayer to make out a right to an abatement. ***Schlaiker v. Assessors of Great Barrington***, 365 Mass. 243, 245 (1974). A taxpayer may sustain this burden by introducing affirmative evidence of fair cash value, or by proving that the assessors erred in their method of valuation. ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 600

(1984). "The introduction of ample and substantial evidence in this regard may provide adequate support for abatement." **Chouinard v. Assessors of Natick**, Mass. ATB Findings of Fact and Reports 1998-299, 307-08 (citing **Garvey v. Assessors of West Newbury**, Mass. ATB Findings of Fact and Reports 1995-129, 135-36; **Swartz v. Assessors of Tisbury**, Mass. ATB Findings of Fact and Reports 1993-271, 279-80). Further, an assessment is presumed to be valid unless the taxpayer is able to sustain his or her burden of proving otherwise. **Schlaiker**, 365 Mass. at 245.

In the present appeal, the appellant did not submit affirmative evidence of the Subject Property's fair cash value, as he had explicitly and reasonably conceded that the property's assessed value did not exceed its fair cash value on the relevant assessment date. Instead, the appellant's case was based exclusively on his argument that the Subject Property had been disproportionately assessed.

To prevail on a disproportionate assessment claim "a taxpayer must show that there is an 'intentional policy or scheme of valuing properties or classes of property at a lower percentage' of fair cash value than the taxpayer's property." **Brown v. Assessors of Brookline**, 43 Mass. App. Ct. 327, 328 (1997) (quoting **Shoppers' World, Inc. v. Assessors of Framingham**, 348 Mass. 366, 377 (1965)). See also **Benjamin Birnie v. Assessors of Stockbridge**, Mass. ATB Findings of Fact and Reports

2010-64, 73 (quoting ***Stilson v. Assessors of Gloucester***, 385 Mass. 724, 727-28 (1982) (The taxpayer bears the burden of proving that the assessors "employed a 'deliberate scheme' . . . whereby they 'systematically assessed properties or a class of properties at a lower percentage of fair cash value than the percentage applied to the taxpayer's property.'")). Further, the taxpayer must provide examples of comparable properties to prove that disproportionate assessment occurred and the "number of properties and the pattern of assessments to fair cash value must have sufficient statistical validity . . . to warrant the inference." ***Benjamin Birnie***, Mass. ATB Findings of Fact and Reports at 2010-74.

To support his claim of disproportionate assessment, the appellant presented the assessed values of five properties that the Board found were generally comparable to the Subject Property. The appellant did not, however, demonstrate that the assessors had employed an intentional policy or engaged in a deliberate scheme of disproportionate assessment. Though the Subject Property's assessed value rose more than five comparable properties in fiscal year 2014, this fact would not, standing alone, provide sufficient evidence to establish disproportionate assessment. See ***Smith v. Assessors of Marion***, Mass. ATB Findings of Fact and Reports 2005-219, 233 (finding that a scheme of disproportionate assessment would require far more data and

analysis between classes of property than the assessment information relating to six properties that had been presented by the appellants).

The appellant's disproportionate assessment argument is also undermined by his failure to take into account the recent renovation of the kitchen in the subject dwelling. This improvement, which was not mirrored by changes in any of the appellant's comparable properties, may well have contributed to the more substantial rise in the Subject Property's assessed value for fiscal year 2014.

In sum, based on the evidence presented, the Board found and ruled that the appellant did not meet his burden of proving that the Subject Property was disproportionately assessed for fiscal year 2014. Further, as previously noted, the appellant stipulated that the Subject Property was not overvalued. Accordingly, the Board issued a decision for the appellee in this appeal.

THE APPELLATE TAX BOARD

By: _____
Thomas W. Hammond, Jr. Chairman

A true copy,

Attest: _____
Clerk of the Board